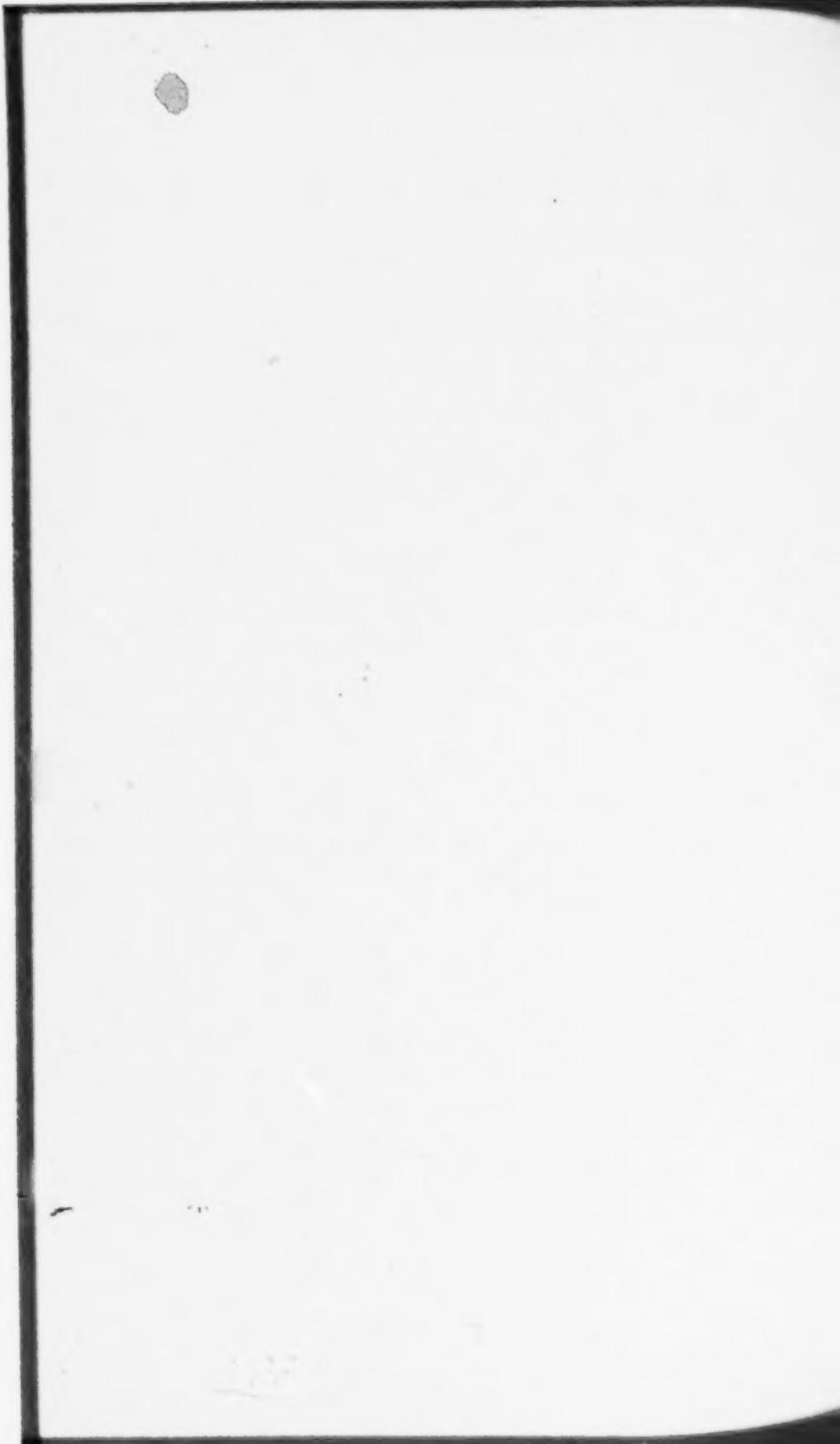


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Supreme Court of the United States

OCTOBER TERM, 1947

No. 458

BENJAMIN F. FIELDS,
Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR REHEARING ON A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered on October 27, 1947, which affirmed a verdict of guilty and a sentence in the District Court of the United States for the District of Columbia against the Petitioner under an indictment charging the Petitioner with violation of 52 Stat. 942 (1938) (21 U. S. C. A. Para. 192 (1940)).

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Rule 33 of the Revised Rules of the Supreme Court of the United States.

IMPORTANT QUESTIONS INVOLVED

The questions involved in Petitioner's brief are as follows:

1. Petitioner's protection under the IV Amendment to the Constitution.
2. 52 Statute 942, as applied in this case.
3. The power of Congressional investigating committees that is fast replacing our jury system.
4. Due process of law, in that Petitioner was denied a statement of the charges and deprived of a trial by jury on important facts.
5. Defense of good faith, as used in a criminal charge.
6. That Petitioner was convicted of an offense that never existed.

STATEMENT

The petition for rehearing is most difficult to present without questioning every step of the trial procedure that is set forth in Petitioner's Brief # 458. Therefore, the position of the Petitioner is stated in brief, which is supported by the record and not denied by the Government's brief that was filed in opposition. Beginning when Petitioner appeared before a committee of Congress and voluntarily explained to them his business and thereafter produced before the committee complete files from his office. He then was asked for additional, specific files and records which he produced. The committee then became *suspicious of who Petitioner paid from the brokerage fee that he*

collected and demanded of Petitioner additional records that would reflect the payment by him of brokerage commissions. Petitioner explained that no such records were in existence and it was impossible to comply with this request. The committee thereafter did not name or identify any specific records, but formed a blanket subpoena and explained that it was for the production of records that would reflect a further payment of commission, they suspecting that someone in War Assets had received a portion of Petitioner's fee.

The Government in its brief in opposition admits that the demand upon Petitioner by the committee was *other evidence of payments and other material relating to or connected with the contract, and this contract is one that the indictment described as one between the United States and Warr Built Homes, Inc., or C. B. Warr, or Warr Caston Lumber Company, dated about June 19, 1946, which contract is admitted never did exist.*

Thereafter, without relating the numerous motions made by Defendant and the trial procedure, it is admitted by the Government's brief that he was convicted for failing to produce the following documents before the committee: (1) a duplicate deposit made on a general bank account which reflected the deposit of a check that was *received by him, for material he sold and which he had described in detail and to the penny, and which did not reflect a payment by him to anyone nor relate to any contract.* (2) a monthly statement from the same bank that reflected an amount and date of a deposit which was the same as the deposit slip *and which did not reflect a payment by him to anyone nor relate to any contract.* (3) a void check stub with the word "cancelled" written across it, *and which did not reflect a payment to anyone nor relate to any contract.*

The question of whether or not the above documents were what the committee requested of Petitioner was re-

moved from the decision of the jury, it being ruled by the Trial Court that they came within the purview of the subpoena, and even though the chairman of the committee testified at the time of trial no evidence was offered that these records are what the committee requested of Petitioner and it is obvious from the record, both of the committee hearings and the trial, that they never were requested and would have been voluntarily produced if they had been.

The brief of the Government evades this question by stating that the chairman of the committee said the documents were not produced, and it must be conceded that such an important question cannot be answered in this manner.

The conviction at the end of trial was on the deposit slip, the bank statement, and the cancelled check stub which, by no stretch of the imagination is a record that reflects the payment of a commission by Petitioner to anyone and at most could only be considered a record that corroborated Petitioner's statement as to the amount that he received, which the committee verified by the bank records, namely; the duplicate bank statement and duplicate deposit slip; the cancelled check stub not only does not reflect a payment, but negatives any possibility of one.

The brief of the Government in opposition does not deny the above facts, but uses the same evasive technique that was used throughout the trial and resulted in Petitioner's conviction. Therefore, the measurement for due process of law must start at the point where the committee said "show me records where you paid out of the profit to someone in War Assets" and ends where the Court said "you are guilty of failing to produce records which corroborate the amount of money you received, even though they did not ask you and you told them the amount to the penny and they verified your statement by the bank records by which

you now stand convicted and you could have produced them if you were asked". In this manner and in no other can the true status of Petitioner's case be presented to this Court. It is believed that no formula of law or justice is known that would produce such a result.

CASES NOW AVAILABLE TO PETITIONER AND NOT PREVIOUSLY PRESENTED

The complete case of Petitioner, beginning from the time that he was cited for contempt up to and including the time of conviction, was based upon *suspicion* and is not only admitted in the Government's brief but facts were produced at the time of trial directly from the chairman of the committee himself that substantiate this. *Garrison vs. United States*, 163 Fed. 2nd 874

"Circumstances sufficient only to raise suspicion of guilt are insufficient to justify conviction. A verdict must not be based on surmise and suspicion".

The demand upon Petitioner by the committee was not only void because it was an illegal demand, but was void because it was an impossible demand. The Government has attempted to cure this defect by justifying the trial judge's ruling when he stated that the documents were covered by the broad subpoena and removed the question from the jury as to whether or not these documents were demanded by the committee. *U. S. vs. DePARCQ., et al.*, 164 Fed. 2nd 124 held

"where an order was utterly void the defendants were not in contempt for failure to obey it."

The questions propounded to Defendant by the committee, the contempt citation, the indictment, and the trial in no way correspond to the conviction.

To deprive Petitioner of a bill of particulars, and later remove a question of fact from the jury as to whether or not the committee requested the records he was found guilty of not producing deprived him of a fair trial and due process of law was completely disregarded. This latter point is covered adequately in *U. S. v. Randall*, 164 Fed. 2nd 284.

"Where established facts and inescapable inferences are inconsistent with accused's professions of innocence, it becomes a question for the jury to weigh evidence and determine guilt or innocence of accused."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be given a rehearing and granted.

ALTON S. BRADFORD,
Attorney for Petitioner

cc:

CERTIFICATE OF GOOD FAITH

I, Alton S. Bradford, attorney for Petitioner, Benjamin F. Fields, hereby certify that this Petition for Rehearing is filed in good faith and not for delay, and that this Petition is restricted to substantial grounds available to Petitioner, not previously presented.

Alton S. Bradford,
Attorney for Petitioner,
832 National Press Building

CERTIFICATE OF SERVICE

I, Alton S. Bradford, certify that a copy of this certificate and a copy of the Petition for Rehearing was delivered to the Attorney General, personally, this 7 day of February, 1948.